

Tyrone William Mahan
Plaintiff,

CASE NO. 2:22-CV-10489

v.

Hon. George C. Steeh

Noah Nagy Et al
Defendants,

Mag. Patricia T. Morris

- Summary Judgement -

FILED
SEP 16 2022

CLERK'S OFFICE
DETROIT

Standard

Summary Judgement is appropriate when the record reveals that there are no genuine issues as to any material fact in dispute and the moving party is entitled to judgement as a matter of law. FED. R. CIV. P. (56) Kocak v. Cmty. Health Partners of Ohio INC., 400 F.3d 466, 468, (6th cir. 2005) The standard for determining whether the evidence presents a sufficient disagreement to require submissions to a Jury or whether it is so one-sided that the one party must prevail as a matter of law. State Farm Fire & Cas. Co. v. McGowan, 421 F.3d 433, 436 (6th cir 2005) (quoting) Aderson v. Liberty Lobby, INC 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed. 2d 262 (1986) A party

opposing a motion for Summary Judgement must ~~do~~ more than simply show that there is some metaphysical doubt as to the material facts. Scott v. Harris, 550 U.S. 372, 380 (2007). When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purpose for ruling on a motion for Summary Judgement. The court must consider all pleadings, depositions, affidavits and admissions on file, and draw all justifiable inferences in favor of the party opposing the motion. Matoushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp. 775 U.S. 574, 587 106, S.Ct. 1348 89 L.Ed. 2d 538 (1986).

Factual and Procedural background

ON or about Jan. 1, 2021 or Jan. 2, 2021 Defendant(s) Warden- Noah Nagy, Deputy Warden- S. Bailey, ADW J. White, R. Burkha A/ADW,

Lt. Root, Sgt. Root, Sgt. Haskett, Sgt. Ferguson responded to an incident. Hultsch was D-unit officer on duty. Plaintiff pleaded to Warden Nagy to remove me from the quarantine isolated area housing covid-19 confirmed cases. I was not positive for Covid-19, I appealed to every above named defendant to remove me or intervene because the virus easily put me at risk of serious harm if I contracted it. This was implemented by the Director Heidi Washington who is involved with daily policy making. Every above named defendant violated my Eighth Amendment by being indifferent to my serious risk of substantial harm and disregarded that risk by failing to take appropriate measures to abate it. There are two material facts left to establish (1) Was the Policy / Dom lawful and (2) Can Plaintiff satisfy the "Objective and Subjective component of deliberant indifference."

Argument

Where everyone agrees that the prison is following a particular Policy the only question for the Court is whether that Policy is legal. Defendants submitted Director's Office Memorandums (DOM) [ECF No. 39-7, Page 10 527] 2021-26, [ECF No. 39-7, Page 10. 539] 2021-26R and [ECF No. 39-7, Page 10. 551] 2021-26R2. The quoted language from M.C.L.A. § 791.206 makes very certain that the Rules adopted by the Department must be promulgated pursuant to Michigan's Administrative Procedures Act (APA) see M.C.L.A. §§ 24.241 and 24.242. A rule that does not comply with the procedural requirements of the (APA) is invalid under Michigan law. The United States Courts of Appeal for the Sixth Circuit also concluded that the Policy Directive is not an "interpretive statement" exempt from the rule promulgation requirements by virtue of M.C.L.A. § 24.207 [An agency statement or declaration of policy which the agency intends to follow, which does not have the force of effect of law, and binds the agency but does not bind any other person MCL 24.203 (6); MSA 3.560 (136) (6)]. The language in Admin. R. closely tracks the Michigan Courts and the United State Supreme Court. An Agency such

as the [Michigan Department of Corrections] has no inherent Authority,
 and the limitations of its power and Authority must be measured by
 the Statutory enactments from which it was created. ON a matter of Law
 the determination is whether the decision was Authorized by Law. So
 defendant(s) violate my 14th Amendment Due Process which incorporates the
Eighth Amendment that guarantees against cruel and unusual punishment.
 See- Spruytte v. Walters 753 F.2d 498, (1985) U.S. App. for the Sixth Circuit,
 Martin v. Dept of Corrections 424 Mich. 553, 384 N.W. 2d 392 (1986) Mich.
 Supreme Court. Plaintiff has proven he was incarcerated under conditions
 posing a substantial risk of serious harm, and that prison officials
 had the "State of mind" and was deliberately indifference to my health and
 safety. Defendants acknowledged Plaintiff satisfied Wilson [ECF No. 39, Page
 10, 367] the first part of the test. Everyone knew Covid-19 created a
 substantial risk of serious harm, and the mentioned defendants in
 this motion acted or failed to act despite their knowledge of a substantial
 risk to serious harm. Deliberate indifference entails something more

than just mere negligence but can be satisfied by something less than
 acts or omissions for the very purpose of causing harm or with knowledge
 that harm will result. Farmer, 511 U.S. at 835 To prove a defendant
 subjective knowledge, a plaintiff may rely on circumstantial evidence.
 A jury is entitled to conclude that a prison official knew of a substantial
 risk from very fact that the risk was obvious. Rhinehart v. Scutt, 894
F.3d 721, 738 (6th Cir. 2018) quoting Farmer, 511 U.S. at 842 The official
 must both be aware of facts which the inference could be drawn
 that a substantial risk of serious harm exist, and he must also draw
 the inference. An express intent to inflict unnecessary pain is not
 required. Whitley v. Albers 475 U.S. 312, 319, 106 S.Ct 1078, 89 L.Ed.2d 251
(1976). Defendants knew D-unit was an isolated medical confirmed case
 quarantine area. They wore gowns, goggles, gloves, and had hand sanitizer,
 none of these thing was provided to me. For a right to be clearly established
 [the] contours of the right must be sufficiently clear that a reasonable

official would understand that what he was doing violates that right.

If the defendants knew Covid-19 creates a substantial risk of serious harm [ECF No. 39, PageID.367], then Heidi Washington, North Nagy, S. Bailey, Lt. Root, C/o Hultschy, ADW/BURKA, Sgt. Haskett, and Sgt. Ferguson had a subjective state of mind when all above named defendants knowingly enforced a Policy and disregarded that risk by failing to take any measures to abate it. These employees enforced an enacted Policy (which they always do) DOM by Heidi Washington that is not a rule with no authority to force anyone but its agency and employees to follow. They knew the harm and disregarded the substantial risk of serious harm, the harm was obvious and defendant created and increased the risk that I would be infected with Covid-19. For a right to be clearly established the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton 483 U.S. 635, 639-40, 107 S.Ct. 3034, 97 L.Ed 2d 523 (1987). "Reasonableness" is a question of law to be decided by the trial court. On a matter of law the determination is whether it

was created and the decision was authorized by law. The primary function of the Executive branch of government is Administration and not lawmaking. The Supreme Court in Zwicker v. Kosta, supra, 389 U.S. at 248, 88 S.Ct. at 39, described the duties of the federal courts was to guard, enforce, and protect every right granted or secured by the Constitution of the United States. The above named defendants was at the quarantine unit Jan 1, 2021 or Jan 2, 2021 - that was never disputed. The above named defendant's used Policies (DOM) 2021-26 (DOM) 2021-26R and (DOM) 2021-26R2 - my forced entrapment in the quarantine unit never disputed and their Rules gave them the Subjective state of , because they ~~was~~ knew the risk of serious harm and disregarded it. The Eighth Amendment is clearly establish concerning cruel and unusual Punishment § Deliberant Indifferent § Due Process 14th Amend. Both Prongs Met. There are not genuine issues as to any material fact because this was my claim.

Certification of Service

I hereby Certify that on September 12, 2022

I Filed with the Clerk of the Federal Eastern District (2)

Copies of the foregoing documents 8pgs A Motion For

Summary Judgement pursuant to Fed. R. Civ. P (56) Please

File (1), Send on to Prosecutor/Attorney General of record

Send me A certified Copy and The Judge A Copy.

Staff will not provide envelope since new defendants

was revealed today and they are providing no envelopes

Verification

I Tyrone William Mahan Swear under the Penalty of perjury that
the foregoing is true and correct upon information and Belief

Tyrone Mahan Signed

9-12-22 Dated

Tyrone William Mahan
G. Robert Cotton Corr. Fac
3500 N. Elm rd.
Jackson, MS. 39201

Tyrone Mahan #264524
C. Robert Cotton Corp. Fac.
3500 N. Elm rd.
Jackson, Mi. 49201

United States District Court
231 W. Lafayette Blvd.
Detroit, Mich. 48226
Mag. Patricia T. Morris

U.S. MARS

